

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1408 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

MOHD NASIR ABDULRAHIM MALIK

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR. HL JANI, AGP, for the respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 14/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 7-1-1998 passed by the Commissioner of Police, Ahmedabad under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on the two criminal cases registered against the petitioner at Kalupur Police Station, Ahmedabad, being C.R.No. 33/97 for offences punishable under Sections 394, 397, 342 and 114 of the IPC and C.R.No. 5/98 for offences punishable under Sections 452, 506(2), 365 and 511 of the IPC in respect of which, as can be seen from the grounds of detention, the investigation is going on. Besides the said criminal cases, further reliance is also placed by the detaining authority on the statements of four witnesses for the incidents which took place on 22-12-97 and 29-12-97. With regard to the incident of 22-12-97, it is alleged that the petitioner had demanded Rs.5000/- for expenses in the Court from the witness. With regard to the incident of 29-12-97, it is alleged that the petitioner demanded Rs.2000 from the witness and to keep the stolen gold as security and when the concerned witness refused to accede to the said demand. On both these occasions when the witnesses refused to accede to the demand of the petitioner, they were dragged from their shops, brought on the road and beaten. It is alleged that on both the occasions people gathered and because of the fear of the petitioner they did not dare to come forward to the rescue of the witnesses and when the petitioner rushed towards the crowd with open knife, the people started running helter-skelter and an atmosphere of fear and terror was created.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that assuming for the sake of arguments that the allegations made against the petitioner are true, the same at best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at

best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also visited . The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 7-1-98 is quashed and set aside. The detenu Mohamad Nashir Abdulrahim Malik is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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